

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 02-63
Table of Allotments,) RM-10398
FM Broadcast Stations.)
(Walla Walla and Burbank, Washington))
)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 13, 2002;

Released: March 22, 2002

Comment Date: May 13, 2002

Reply Comment Date: May 28, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed by Alexandra Communications ("petitioner"), permittee of Station KUI-FM, Channel 256C1, Walla Walla, Washington, proposing the reallocation of Channel 256C1 from Walla Walla to Burbank, Washington, and the modification of Station KUI-FM's construction permit accordingly.¹ Petitioner states its intention to apply for the channel, if reallocated to Burbank.

2. The proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that the reallocation of Channel 256C1 to Burbank would result in a preferential arrangement of allotments pursuant to the FM allotment priorities set forth in the Revision of FM Assignment

¹ An application (File No. BALH-20010228AAN) to assign Station KUI-FM from Mark Jacky Broadcasting to Alexandra Broadcasting was granted on March 26, 2001, and was consummated on April 19, 2001.

Policies and Procedures, 90 FCC 2d 88, 91 (1982), because it could potentially provide a first local service to the community.^{2 3} Petitioner further states that Burbank is a Census Designated Place with a 1990 U.S. Census of 1,745 persons (the 2000 U.S. Census is 3,303 persons). Since petitioner does not seek to change its Class C1 authorization site, a gain and loss area study is not required. Because the Commission has expressed its concern with the potential migration of stations from rural to urban areas, we note that Burbank is located outside the Richland-Kennewick-Pasco, Washington Urbanized Area. However, Station KUJ-FM's 70 dBu signal currently covers approximately 61% of that Urbanized Area. Since Station KUJ-FM does not seek to change its transmitter site, a Tuck analysis is not necessary.⁴ However, petitioner is requested to provide the overall public interest benefits that would be derived from the reallocation.

3. We believe that this proposal warrants consideration since the reallocation would provide a first local aural transmission service to Burbank, Washington, without depriving Walla Walla, Washington of its sole local service.⁵ An engineering analysis has determined that Channel 256C1 can be reallocated to Burbank in compliance with the Commission's minimum distance separation requirements at the petitioner's authorized construction permit site.⁶ As requested, we propose the modification of Station KUJ-FM's license to specify operation on Channel 256C1 at Burbank, Washington, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 256C1 at Burbank, Washington.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

² The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

³ We note that Pamplin Broadcasting-Washington, Inc., filed an application (File No. BNP-20010315AAO) for an AM station (1560 kHz) at Burbank, Washington, which is pending.

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁵ Stations KGDC(AM), KUJ(AM), KTEL(AM), KWWS (NCE), KWCW(NCE), KTWY(FM), KNLT(FM), KXRX(FM), and KHSS(FM) would remain licensed to the community.

⁶ The coordinates for Channel 256C1 at Burbank are 45-57-22 North Latitude and 118-41-11 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Walla Walla, Washington	227C1, 239C, 246C, 256C1, 264C3	227C1, 239C, 246C, 264C3
Burbank, Washington	--	256C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before May 13, 2002, and reply comments on or before May 28, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

Mr. Thomas D. Hodgins
Alexandra Communications
45 Campbell Road
Walla Walla, Washington 99362
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the

proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.